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|--|---|---|--|--|--------|-----------------------------|
|  | U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement | | ASSISTANCE ID NO. | | | DATE OF AWARD 09/29/2011 |
| | | | PRG | DOC ID | AMEND# | |
| | | | CS - 72000110 - 0 | | | MAILING DATE 10/06/2011 |
| | | | TYPE OF ACTION New | | | |
| RECIPIENT TYPE: State | | Send Payment Request to: R2 Grants & Contracts Management Branch | | | | |
| RECIPIENT: | | PAYEE: | | | | |
| Puerto Rico Environmental Quality Board P.O. Box 11488 Santurce, PR 00910 EIN: 66-0454573 | | Puerto Rico Environmental Quality Board P.O. Box 11488 Santurce, PR 00910 | | | | |
| PROJECT MANAGER | | EPA PROJECT OFFICER | | EPA GRANT SPECIALIST | | |
| Wanda E. Garcia Hernandez P.O. Box 11488 Santurce, PR 00910 E-Mail: wandagarcia@jca.gobierno.pr Phone: 787-767-8073 | | Yasmin Laguer 290 Broadway, CEPD/MWPB New York, NY 10007-1866 E-Mail: Laguer.Yasmin@epamail.epa.gov Phone: 787-977-5848 | | Stephanie Montrallos Grants & Contracts Management Branch, OPM/GCMB E-Mail: Montrallos.Stephannie@epa.gov Phone: 212-637-3386 | | |
| PROJECT TITLE AND DESCRIPTION PREQB-FFY'10 CWSRF CAPITALIZATION GRANT Puerto Rico Environmental Quality Board (PREQB): This agreement is for a capitalization grant which provides funds for Puerto Rico's Clean Water State Revolving Fund program to provide low interest financing to recipients for costs associated with the planning, design, and construction of eligible water quality improvement and protection projects throughout the Commonwealth of Puerto Rico. The objectives are to establish and manage an effective comprehensive Water Pollution and Control Revolving Funds program and to maintain a self-sustaining revolving fund so as to improve and protect water quality and public health. | | | | | | |
| BUDGET PERIOD 10/01/2009 - 09/30/2014 | | PROJECT PERIOD 10/01/2009 - 09/30/2014 | | TOTAL BUDGET PERIOD COST \$31,890,000.00 | | |
| | | | | TOTAL PROJECT PERIOD COST \$31,890,000.00 | | |
| NOTICE OF AWARD Based on your application dated 03/01/2011, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$26,575,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$26,575,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments. | | | | | | |
| ISSUING OFFICE (GRANTS MANAGEMENT OFFICE) | | | AWARD APPROVAL OFFICE | | | |
| ORGANIZATION / ADDRESS | | | ORGANIZATION / ADDRESS | | | |
| Grants and Contracts Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866 | | | U.S. EPA, Region 2 Caribbean Environmental Protection Division 1492 Ponce de Leon Ave, Suite 417 San Juan, PR 00917 | | | |
| THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY | | | | | | |
| SIGNATURE OF AWARD OFFICIAL Digital signature applied by EPA Award Official | | TYPED NAME AND TITLE Donna J. Vizian, Assistant Regional Administrator for Policy and Management | | DATE 09/29/2011 | | |
| AFFIRMATION OF AWARD | | | | | | |
| BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION | | | | | | |
| SIGNATURE | | TYPED NAME AND TITLE Pedro J. Nieves Miranda, Esq., President | | DATE | | |

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| FUNDS | FORMER AWARD | THIS ACTION | AMENDED TOTAL |
|-------------------------------|--------------|---------------|---------------|
| EPA Amount This Action | \$ | \$ 26,575,000 | \$ 26,575,000 |
| EPA In-Kind Amount | \$ | \$ | \$ 0 |
| Unexpended Prior Year Balance | \$ | \$ | \$ 0 |
| Other Federal Funds | \$ | \$ | \$ 0 |
| Recipient Contribution | \$ | \$ 5,315,000 | \$ 5,315,000 |
| State Contribution | \$ | \$ | \$ 0 |
| Local Contribution | \$ | \$ | \$ 0 |
| Other Contribution | \$ | \$ | \$ 0 |
| Allowable Project Cost | \$ 0 | \$ 31,890,000 | \$ 31,890,000 |

| Assistance Program (CFDA) | Statutory Authority | Regulatory Authority |
|---|---------------------------------------|-----------------------------|
| 66.458 - Capitalization Grants for State Revolving Fund | Clean Water Act: Secs. 205(m) 601-607 | 40 CFR PTS 31 & 35 SUBPRT K |

| Fiscal | | | | | | | | | |
|-----------|------------|----|--------------|---------------------|---------|--------------|--------------|-------------------|---------------------------|
| Site Name | Req No | FY | Approp. Code | Budget Organization | PRC | Object Class | Site/Project | Cost Organization | Obligation / Deobligation |
| - | 1102HE0248 | 11 | E2C | 023 | 202B80E | 4111 | 10CA | | 26,575,000 |
| | | | | | | | | | 26,575,000 |

Budget Summary Page: PREQB FFY 2010 CWSRF CAPITALIZATION GRANT

| Table A - Object Class Category (Non-construction) | Total Approved Allowable Budget Period Cost |
|---|--|
| 1. Personnel | \$307,158 |
| 2. Fringe Benefits | \$90,664 |
| 3. Travel | \$42,000 |
| 4. Equipment | \$33,500 |
| 5. Supplies | \$5,614 |
| 6. Contractual | \$71,000 |
| 7. Construction | \$0 |
| 8. Other | \$31,180,975 |
| 9. Total Direct Charges | \$31,730,911 |
| 10. Indirect Costs: % Base | \$159,089 |
| 11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %) | \$31,890,000 |
| 12. Total Approved Assistance Amount | \$26,575,000 |
| 13. Program Income | \$0 |
| 14. Total EPA Amount Awarded This Action | \$26,575,000 |
| 15. Total EPA Amount Awarded To Date | \$26,575,000 |

Administrative Conditions

1. REQUIRED FIMAS CERTIFICATION

EQB may incur costs but is precluded from submitting payment requests for reimbursement of personnel, fringe and indirect costs for this agreement until it has successfully completed the second FiMaS certification and/or has received authorization from the award official, whichever occurs first, to submit payment requests. However, EQB may submit payment requests for reimbursement of non-personnel costs incurred under this agreement in accordance with Special Condition Number 2, "Special Condition-High Risk Status."

2. SPECIAL CONDITION-HIGH RISK STATUS

The March 2001 survey of the Puerto Rico Environmental Quality Board (EQB) disclosed significant deficiencies in its financial management/grants management systems. Based on these findings and pursuant to the EPA regulations at 40 C.F.R. 31.12, EPA Region 2 has classified EQB as a high-risk grantee and determined that special grant conditions and restrictions corresponding to EQB's high-risk condition shall be included in this grant award. The EQB was notified of its status as a high-risk grantee and EPA's findings on this matter by letter dated June 25, 2001, which enclosed, among other documents, the "2001 EQB Corrective Action Plan" (CAP). The CAP identifies the problematic areas of EQB's financial management/grants systems, sets forth the corrective actions that must be taken by EQB, and proposes deadlines by which the corrective actions must be completed. Pursuant to 40 C.F.R.31.12(b) and in accordance with the CAP, as a high-risk grantee, EQB must comply with the following special grant conditions:

REIMBURSEMENT

EQB shall not submit reimbursement requests to EPA until they have been reviewed by an EPA-accepted Certified Public Accounting (CPA) firm and verified by the firm that the submitted financial information is current, accurate, complete, and allocable to the subject grant. This condition will become effective on October 31, 2001 in order to give EQB the necessary time to solicit and procure the services of an acceptable CPA firm. However, effective immediately each reimbursement request must include backup documentation for all costs claimed, including copies of authorization documents, vouchers, verification of receipt of equipment, supplies, or services, checks paid, and a written certification that items or services have been received and placed in service. Such certification shall be made by the President, EQB. Only those costs so documented and verified will be paid by EPA.

Specific documentation to be included with each reimbursement request is as follows:

1. Personnel Services

i. Schedule

- names of employees charging time to this agreement
- number of hours charged by each employee, multiplied by the employee's hourly rate, giving total amount charged

ii. Time Sheets (for all employees other than those approved to be allocated via an approved Time Allocation Plan)

- employees' time sheets to support the hours charged, as shown on the schedule described above. Time sheets must reflect actual hours worked daily, not estimated amounts or percentages.
- certification by the President of EQB that the hours shown as worked in support of Federal grants were actually spent on activities approved and eligible under that grant.
- time allocation plan backup showing calculations of allocated salaries, based on technical employees' time described in (b), above

iii. Non-working Hours

- documentation of how payment was made for non-working hours (i.e., use of Commonwealth funds and documentation or payment by Commonwealth.

2. Fringe Benefits

- total salaries charged, multiplied by the fringe benefit rate, giving total fringe amount charged. Individual items included in fringe benefit rate must be identified. No charges for non-working hours (e.g., annual leave or sick leave) are to be included in these rates until such time as EPA has approved the methodology in writing

3. Travel

- listing of trips taken, trip dates, location and actual costs incurred
- copy of authorization documents for each trip
- written certification by employee's supervisor that trip took place
- copy of travel voucher showing actual expenditures
- copy of Treasury check showing amount paid. No amounts in excess of actual expenditures will be reimbursed by EPA

4. Equipment, Supplies and Other (contracts/services)

- listing of expenditures
- Copy of procurement requests
- Statement of acceptance of goods/services
- Certification by the Chair that each item of equipment, supplies and other services were received and put into use by the program for which they were intended
- copy of vendor invoices
- copy of documents certifying receipt
- copy of Treasury checks paid

5. Indirect Costs

- In order for indirect costs to be requested for reimbursement, EQB must have an approved indirect cost rate for that period.
- Any reimbursement requests or Federal Financial Reports (FFRs) that include indirect costs shall contain a certification by an independent accounting firm accepted by EPA that none of the costs included in the indirect rate have been claimed as direct costs under any Federal grants.

3. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200

- 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html.

4. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following each anniversary of the start date of the agreement. The FFR must be faxed to the Las Vegas Finance Office at 702-798-2423 or sent to the address below. A courtesy copy of the interim FFR can be submitted to the Grants and Contracts Management Branch using one of the following options: email to Region2_GrantApplicationBox@epa.gov, fax to 212-637-3518 or sent to us in the mail at U.S. EPA - Region 2, 290 Broadway, 27th Floor, New York, NY 10007. All email attachments must be sent in pdf format. Documents emailed to us in any other format cannot and will not be accepted.

B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center:

U.S. Environmental Protection Agency
Las Vegas Finance Center
PO Box 98515
Las Vegas, NV 89119

or by Fax to: 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and

Contracts Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

5. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

6. LOBBYING AND LITIGATION - ALL RECIPIENTS

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

7. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

8. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE (PART 31)

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA, Region 2, Grants and Contracts Management Branch prior to the budget/project period expiration dates. An interim FFR (SF-425), which covers all

expenditures and obligations to date, must also be submitted to the Las Vegas Finance Office at the address below.

U.S. Environmental Protection Agency
Las Vegas Finance Center
PO Box 98515
Las Vegas, NV 89119

or by Fax to: 702-798-2423.

9. RECYCLING AND WASTE PREVENTION

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

10. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

11. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

12. SUBAWARD POLICY

- a. The recipient agrees to:
 1. Establish all subaward agreements in writing;
 2. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
 3. Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
 4. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
 5. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
 6. Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
 7. Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
 8. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

13. SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

14. PRASA DEBARMENT

In addition the general requirements set forth in Administrative Condition 12, Suspension and Debarment, above, specifically, PREQB shall not use any of the funds under this grant to support projects at the following Puerto Rico Aqueduct and Sewer Authority (PRASA) Facilities, which were

automatically debarred on April 19, 2007. The current list of PRASA Facilities Excluded from Federal Funding, as published August 8, 2007 on the Excluded Parties List System include:

Wastewater Facilities

- 1. Puerto Nuevo Wastewater Treatment Plant**, State Road 2, Km 2.0, Kennedy Ave., San Juan, Puerto Rico 00916;
- 2. Dorado Wastewater Treatment Plant**, State Road 693, Km 5.6, Dorado, Puerto Rico 00646;
- 3. Isabela Wastewater Treatment Plant**, State Road 466 (End), Isabela, Puerto Rico 00662;
- 4. Camuy Hatillo Wastewater Treatment Plant**, State Road 485, Km 3.5, Camuy Hatillo Puerto Rico 00627;
- 5. Caguas Wastewater Treatment Plant**, State Road 796, Km 6.6, Caguas, Puerto Rico 00725;
- 6. Vega Baja Wastewater Treatment Plant**, State Road 686, Km 14.7, Vega Baja, Puerto Rico 00693;
- 7. Santa Isabel Wastewater Treatment Plant**, State Road 588, Km 0.5, Santa Isabel, Puerto Rico 00957;
- 8. Bayamon Wastewater Treatment Plant**, 466 Sabana Seca Ave, Catano, Puerto Rico 00962;
- 9. Carolina Wastewater Treatment Plant**, State Road 187, Km 16.5, Loiza, Puerto Rico 00772

Water Treatment Facilities

- 1. Guaynabo Water Treatment Plant** (Limited to the Sludge Treatment System Only) State Road 833, Km 14.8 Guaynabo, Puerto Rico 00965;
- 2. Enrique Ortega Water Treatment Plant** (Limited to the Sludge Treatment System Only) State Road 827, Km 5.6 Toa Alta, Puerto Rico 00954;
- 3. Sergio Cuevas Water Treatment Plant** (Limited to the Sludge Treatment System Only) State Road 181, Km 30 Truillo Alto, Puerto Rico 00977;
- 4. EL Yunque Water Treatment Plant** (Limited to the Sludge Treatment System Only) State Road 955, Km 0.3 Rio Grande, Puerto Rico 00745;
- 5. Canovanas Water Treatment Plant** (Limited to the Sludge Treatment System Only) State Road 3, Km 5.6 Canovanas, Puerto Rico 00729;

Combined Sewage/Storm Water Collection Systems

- 1. Combined Sewage/Storm Water Collection System** Located along Ponce de Leon Avenue from the Auxilio Mutuo Hospital (Stop 37 1/2) to the Mercantil Plaza Building (Stop 26) (Violating Facilities)

This grant condition shall remain in effect with respect to each PRASA facility named above so long as that PRASA facility remains on the Excluded Parties List System, which may be accessed at <http://epls.arnet.gov>.

15. TRAFFICKING IN PERSONS

a. Provisions applicable to a recipient that is a private entity

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

- ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
- 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR 1532.

b. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR 1532

c. *Provisions applicable to any recipient*

- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
- 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. *Definitions.* For purposes of this award term:

- 1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

16. DUNS AND CCR REQUIREMENTS

Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;

- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- 1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- 2. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- 3. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- 1. Receives a subaward from you under this award; and
- 2. Is accountable to you for the use of the Federal funds provided by the subaward.

17. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

- 1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).
- 2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrc.gov.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- 3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrc.gov specify.

b. Reporting Total Compensation of Recipient Executives.

- 1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at www.ccr.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus* .
- ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified* .
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

18. ACORN

Congress has prohibited EPA from using its FY 2011 appropriations to provide funds to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. None of the funds provided under this agreement may be used for subawards/subgrants or contracts to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to their EPA Grants Management Office.

19. INDIRECT COSTS

If the recipient has submitted an indirect cost rate proposal to the cognizant Federal agency but does not yet have an approved rate, it must submit a copy to the EPA Regional Office of the final or provisional Indirect Cost Negotiation Agreement that covers the agreement's budget period before it may charge indirect costs against this Assistance Agreement. If the recipient's negotiated rate does not extend through the life of the Assistance Agreement, additional indirect cost rate proposal(s) must be submitted until the full life of the Assistance Agreement is covered by negotiated indirect cost rates. The recipient **will not charge nor claim for reimbursement any indirect costs that are not covered by a negotiated indirect cost rate.**

20. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

Pursuant to 40 CFR, Section 33.412, Tribal and Insular Area recipients are not required to negotiate a fair share goal until 3 years from the effective date of the DBE Rule. After that 3-year phase-in period has expired, Tribal and Insular Area recipients are required to adhere to the full requirements of 40 CFR, Part 33, Subpart D, as applicable.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained.

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.

The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and All other recipients not identified as annual reporters (40 CFR Part 30

and/or 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <http://www.epa.gov/osbp/grants.htm>.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

21. PRE AWARD COSTS

In accordance with 40 C.F.R. §31.23, the recipient is authorized to charge pre-award costs to the agreement from **October 1, 2009** the beginning of the budget period provided that such costs were contained in the approved application.

22. MATCHING FUNDS VERIFICATION REQUIREMENT FOR CLEAN WATER STATE REVOLVING FUND PROGRAM

In accordance with the Governor of Puerto Rico's certification letter, dated September 22, 2011; EQB agrees to provide satisfactory evidence of the availability of matching funds for the purposes of meeting the 20% state match requirement as set forth in Section 602(b)(2) of the Clean Water Act and Programmatic Condition No. 11. In the event the state match is not available by **December 31, 2011**, EPA will pursue enforcement remedies for PREQB's noncompliance in accordance with 40 CFR 31.43, as appropriate, which, among other legal remedies available, may include the termination of this agreement in its entirety.

Programmatic Conditions

1. QUARTERLY DATA REPORTING

The recipient of funds for the State Revolving Funds from P.L. 111-88, the FY 2010 Interior and Environment Appropriation, agrees to comply with all requests for data related to the use of the funds under Subchapter VI of the Clean Water Act (CWA), and to report all uses of the funds no less than quarterly, as EPA specifies for the CWSRF Benefits Reporting database and the Drinking Water Project Benefits Reporting database. This reporting shall include but not be limited to data with respect

to compliance with the Green Project Reserve and additional subsidization requirements as specified in the FY 2010 Interior and Environment Appropriation and the Conference Report (H. Rpt. 111-316) and as outlined in the FY 2010 Procedures document, and other data as necessary to carry out the authorities cited in this Grant Condition.

2. RECIPIENTS SUBJECT TO 40 CFR PART 35, SUBPARTS K

In accordance with 40 CFR §31.40 and 40 CFR §35.3165, as applicable, the recipient agrees to provide in its Annual Report information regarding environmental results in the following areas:

- 1) achievement of the outputs and outcomes established in the Intended Use Plan and set-aside workplans;
- 2) the reasons for delays if established outputs or outcomes were not met; and
- 3) any additional pertinent information on environmental results.

3. ADDITIONAL SUBSIDIZATION

The 2010 Appropriation to the CWSRF and DWSRF programs requires that a portion of the capitalization grant funds be used to provide additional subsidization, while relying on the purposes of the Funds in their underlying acts.

The application of the additional subsidies – in the form in which they are authorized in the FY 2010 Appropriation – to the base SRF programs raises important issues for the underlying SRF programs. While the DWSRF program has since its inception offered discretion to States to provide additional subsidization, that authority was closely circumscribed by requirements that communities assisted meet the State’s definition of “disadvantaged,” and that the subsidies provided in any year could not exceed 30 percent of the capitalization grant. In contrast, the FY 2010 Appropriation is more demanding and expansive. It requires States to provide a minimum of 30 percent in additional subsidies, and authorizes States to provide up to 49.92 percent of the capitalization grant in the CWSRF, and up to the entire amount of the grant in the DWSRF, in additional subsidization to any “eligible recipients” of SRF assistance.

Moreover, the similar provision in ARRA was in a one-time, supplemental appropriation that was in addition to the base SRF program appropriation for FY 2009. The additional subsidization provision in FY 2010 comes in the appropriation for the base SRF programs. By authorizing States to provide up to a majority (CWSRF) or entirety (DWSRF) of the base SRF program capitalization grant in additional subsidies, this FY 2010 provision contemplates the possibility that, for the first time, a minority or none of these base program capitalization grant funds will be repaid into the State Revolving Funds.

Under these circumstances, in which a large amount of base program capitalization grant funds will not revolve, it is prudent to include additional specifications in the capitalization agreements with States that ensure that the subsidies are funding infrastructure that is sustainable (not enabling the expansion of centralized infrastructure to accommodate growth while failing to adequately repair, replace, and upgrade infrastructure in existing communities who are not otherwise able to afford such projects). Section 602(a) of the CWA and section 1452(a)(3)(A)(i) of SDWA gives the authority to add such specifications to the capitalization grant. CCWWAA Section 602(a) specifies that the “State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b)...” SDWA Section 1452(g)(3)(A) authorizes EPA to publish guidance “to ensure that each state commits and expends funds allotted to the State under this section as efficiently

as possible.” Therefore, EPA is adding a grant condition to all FY 2010 CWSRF and DWSRF capitalization grants.

a. The recipient agrees to use funds provided by this grant to provide additional subsidization in the form of principal forgiveness, negative interest rate loans, or grants, in accordance with P.L. 111-88 as follows: (1) Clean Water State Revolving Fund capitalization recipients agree to use at least 14.98 percent (\$3,980,935), and no more than 49.92 percent (\$13,266,240) of the funds provided by this grant to provide additional subsidization in accordance with P.L. 111-88.

b. Priority for additional subsidies should be given to communities that could not otherwise afford such projects. To further ensure sustainability of projects receiving additional subsidies, these subsidies should be directed to: 1) repair, replacement, and upgrade of infrastructure in existing communities; 2) investigations, studies, or plans that improve the technical, financial and managerial capacity of the assistance recipient to operate, maintain, and replace financed infrastructure; and/or 3) preliminary planning, alternatives assessment and eligible capital projects that reflect the full life cycle costs of Infrastructure assets, conservation of natural resources, and alternative approaches to integrate natural or “green” systems into the built environment. The recipient agrees to provide in its Annual Report an explanation as to how they did or did not address this provision.

4. GREEN PROJECT RESERVE (GPR)

The recipient agrees to make a timely and concerted solicitation for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The recipient agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 20% of its capitalization grant or \$5,315,000. If there are not sufficient qualified projects or components already in the IUP that total 20% of the FY2010 funds available, the recipient agrees to conduct additional solicitation, to amend its project list to include any such qualified projects thus identified, and to provide not less than 20% of such FY 2010 funds available to such projects on its amended project list.. If there are not sufficient qualified projects or components on the amended project list after such additional solicitation, the recipient may if necessary submit a waiver request to EPA in accordance with the FY 2010 Procedures.

5. DAVIS BACON / WAGE RATE REQUIREMENTS

The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled “Wage Rate Requirements Under FY 2010 Appropriations.” This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009 and before October 1, 2010.

6. EPA-AUTOMATED CLEARINGHOUSE FOR PAYMENT

The Puerto Rico Environmental Quality Board (PREQB), acting on behalf of the Commonwealth of Puerto Rico, agrees to accept payment from the United States Environmental Protection Agency (EPA) with funds to be made available from the FY 2010 Title VI allotment and Reprogrammed Construction Grant Funds pursuant to the Clean Water Act, as amended, (the Act), in accordance with the below payment schedule established under Section 601(b) of the Act and will deposit all such payments into the State Revolving Fund (SRF) in accordance with Title VI. Payment, cash draw and disbursement are defined and in accordance with 40 CFR Part 35 Subpart K and the Operating Agreement.

As per EPA's publication, EPA 430/09-88-009, dated July 1988, entitled, "Letter of Credit, How is it Used in EPA's State Revolving Fund Program", a payment in the SRF Program is an action by EPA to increase the amount of funds available for cash draw in the Letter of Credit (i.e. the ceiling). Through a payment, the EPA makes funds available to the State up to the amount of the capitalization grant. A payment is not a transfer of cash to the State but only an authorization making funds available for transfer to the State when a cash draw request is submitted. A payment schedule, indicating the timing and size of the payment or payments to be made will be entered into between EPA and the State. It will be based on the State's projection of binding commitments, the rules for cash draws and the use of the funds.

In consideration of the above, Payment from the EPA-ACH shall be made in accordance with the following schedule. Future cash draws may not exceed the amount shown below.

| | |
|---------------|-----------------|
| January 2012* | \$26,575,000 ** |
|---------------|-----------------|

***Upon receipt and acceptance of Grant Agreement and verification of State Match funds.**

**** Administrative Costs:** Under Section 603(d)(7), money in the SRF may be used for the reasonable costs of administering the Fund, provided that the amount does not exceed 4% of all grant awards to such fund under this title. Under this agreement, Total Administration Costs requested is the allowable 4%, \$1,063,000; the remaining 96%, \$30,827,000, is currently applied to the Project costs. PREQB is prohibited from submitting payment requests for the 4% Administrative Costs (\$1,063,000) until Administrative Condition No. 1 has been satisfied.

7. PAYMENT TO INDIVIDUAL CONSULTANTS

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2011, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

8. CASH DRAW REQUIREMENTS

PREQB agrees to the following conditions in accepting this Grant Agreement under the EPA-ACH method of financing:

- (a) Cash draws shall be made only to meet immediate disbursement needs;
- (b) The recipient shall provide timely reporting of cash disbursements and balances as required by the EPA-Automated Clearinghouse Recipient's Manual;
- (c) The recipient shall impose the same standards of timing and reporting on secondary recipients, if any.

Failure on the part of the recipient to comply with the above conditions may cause the undisbursed portions of the EPA-ACH to be revoked, and the payment method under this Agreement to be changed from the Automated Clearinghouse to a reimbursement method of payment.

9. GENERAL ADMINISTRATIVE REQUIREMENTS

PREQB agrees pursuant to 40 CFR Part 35, Subpart K, to administer the State Revolving Fund program in accordance with the terms, agreements, assurances and representations made within the Operation Agreement, the Intended Use Plan and the application for Federal assistance dated March 1, 2010 which are incorporated by reference into this Grant Agreement. The scopes of work for this Grant shall be the projects listed in the FY 2010 Intended Use Plan dated April, 2010.

10. LOAN FEES

In the event that PREQB and/or the Puerto Rico Infrastructure Financing Authority (PRIFA) elect to charge fees to any loan recipient, PREQB agrees to submit to EPA, for its approval, the specific structure and method of charging the fee(s) before any fees are charged.

11. MATCHING FUNDS

In accordance with 40 CFR §35.3135(b), PREQB shall deposit into the Fund at least 20 percent matching share or **\$5,315,000**, of the Capitalization Grant awarded. PREQB must provide its proportional cash match before or at the time it draws Federal funds unless PREQB draws all of its match fund before drawing any Federal funds.

As per 40 CFR 35.3135(b) (1) & (3), PREQB must agree to deposit into its SRF an amount equaling at least 20% of the amount of each grant payment. The PREQB must identify the source of the matching amount in the capitalization grant application and must establish to the RA's satisfaction that the source is not Federal money, unless specifically authorized to be used for such purposes under the statute making the funds available.

12. PROGRAM INCOME/ADMINISTRATIVE FEES

In accordance with 40 CFR §31.25(g)(2), the recipient is authorized to add program income generated under this agreement to the funds committed to the grant agreement by EPA and the grantee. Fees

classified as program income are authorized to be used for eligible CWSRF project assistance, administration of the CWSRF program and for State Match. In addition to the purposes authorized for program income fees, fees classified as non-program income may be used for various general water quality program purposes. All fees shall be audited annually and reported on in both the Intended Use Plan and the Annual Report.

13. ENVIRONMENTAL RESULTS

In accordance with 40 CFR § 35.3165 or § 35.3570, as applicable, the recipient agrees to provide in its Annual or Biennial Report, or in its Annual Reviews, as applicable, information regarding environmental results in the following areas:

- a. Achievement of the outputs and outcomes established in the Intended Use Plan and set-aside work plans;
- b. The reasons for delays if established outputs or outcomes were not met; and
- c. Any additional pertinent information on environmental results.

14. FOOD AND REFRESHMENTS

Unless the event(s) are specified in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- a) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- b) A description of the purpose, agenda, location, length and timing for the event.
- c) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

15. SUFFICIENT PROGRESS

EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

16. CLEAN WATER NATIONAL INFORMATION MANAGEMENT SYSTEM (CWNIMS)

PREQB agrees to enter data, as required by EPA to the Clean Water National Information Management System (CWNIMS). EPA agrees to provide technical assistance to the State in its use of the CWNIMS as a management information system.

17. SPECIAL GRANT CONDITION- STATE ENVIRONMENTAL REVIEW PROCESS

EPA's State Revolving Fund (SRF) Regulations, found at 40 CFR Part 35 Subparts K and L, require that capitalization grant agreements contain, or incorporate by reference, among other requirements, the State's EPA-approved environmental review processes (SERP) [40 CFR § 35.3130 or 40 CFR § 35.3545, as appropriate]. The EPA regulations also require that any significant proposed change to a previously approved SERP requires prior review and approval by the EPA Regional Administrator [40 CFR § 35.3140(e) or 40 CFR § 35.3580(h), as appropriate].

The Commonwealth's SERP that was previously approved by EPA as meeting the NEPA-like requirements is no longer being implemented by the Commonwealth. This represents a significant change to the SERP.

Within 120 days of this grant award, the Commonwealth shall (1) submit to EPA a new proposed SERP which conforms generally to EPA's National Environmental Policy Act (NEPA) procedures at 40 CFR Part 6, or (2) submit to EPA its own "NEPA-like" SERP, in accordance with the applicable 40 CFR Part 35 Subparts K and L requirements. In its submittal, the Commonwealth shall also address how it plans to ensure federal agency consultation and compliance with the various other applicable federal environmental laws and authorities (Endangered Species Act, National Historic Preservation Act, and others).

EPA will expeditiously review the submittal in accordance with the EPA approval process and evaluation criteria contained in 40 CFR Part 35 Subparts K and L, as applicable. Within 30 days of receipt of EPA's review comments on the proposed new SERP, the Commonwealth shall make such revisions to its procedures as are necessary to obtain EPA's approval.

Failure to comply with this condition in a timely manner could result in a determination by EPA that the Commonwealth is not in compliance with the terms of the grant agreement, and EPA may take one or more corrective actions, which include the issuance of a notice of non-compliance, suspension of payments, and other remedies that may be legally available (40 CFR § 35.3170, 40 CFR § 35.3585, and 40 CFR § 31.43, as appropriate).

In no case shall the Commonwealth award an SRF loan for any project that has not been reviewed in accordance with an EPA-approved SERP.